

ICO consultation on the draft right of access guidance

The right of access (known as subject access) is a fundamental right of the General Data Protection Regulation (GDPR). It allows individuals to find out what personal data is held about them and to obtain a copy of that data. Following on from our initial GDPR guidance on this right (published in April 2018), the ICO has now drafted more detailed guidance which explains in greater detail the rights that individuals have to access their personal data and the obligations on controllers. The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request.

We are running a consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance by helping us to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

If you would like further information about the consultation, please email SARguidance@ico.org.uk.

Please send us your response by 17:00 on **Wednesday 12 February 2020**.

Privacy statement

For this consultation, we will publish all responses received from organisations but we will remove any personal data before publication. We will not publish responses received from respondents who have indicated that they are an individual acting in a private capacity (e.g. a member of the public). For more information about what we do with personal data [see our privacy notice](#).

Please note, your responses to this survey will be used to help us with our work on the right of access only. The information will not be used to

consider any regulatory action, and you may respond anonymously should you wish.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. [You can read their Privacy Policy.](#)

Q1 Does the draft guidance cover the relevant issues about the right of access?



No

Unsure / don't know

If no or unsure/don't know, what other issues would you like to be covered in it?

Q2 Does the draft guidance contain the right level of detail?



No

Unsure / don't know

If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

Q3 Does the draft guidance contain enough examples?



No

Unsure / don't know

If no or unsure/don't know, please provide any examples that think should be included in the draft guidance.

Q4 We have found that data protection professionals often struggle with applying and defining 'manifestly unfounded or excessive' subject access requests. We would like to include a wide range of examples from a variety of sectors to help you. Please provide some examples of manifestly unfounded and excessive requests below (if applicable).

An employee makes a SAR to their employer for copies of their personal data contained in emails only. A search of their systems to find the emails took less than an hour, however this search returned 194,072 emails. In our view, it is highly unlikely that all of those emails contain the requestor's personal data and therefore it would be excessive and unreasonable for the employer, given the amount of time and resource it would take, to have to review all those emails to search for the personal data within. It would save a lot of time and resource if the employer was to use reasonable efforts to search the personal data in the first place i.e. to carry out more focused searches, which would be more likely to return more relevant search results.

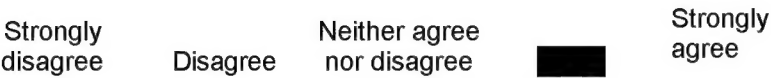
Q5 On a scale of 1-5 how useful is the draft guidance?



Q6 Why have you given this score?

Most issues are covered.

Q7 To what extent do you agree that the draft guidance is clear and easy to understand?



Q8 Please provide any further comments or suggestions you may have about the draft guidance.

The guidance does not cover that it is an essential step of responding to a subject access request to review search results for information that is solely third party personal data (i.e. that is not mixed with the personal data of the requestor) and to redact this.

In the 'How do we decide what information to supply?' section, the guidance states that search results 'may' contain third party data, and therefore 'sometimes' you need to consider each document or the content of each document separately. From experience, the results of a search for a requestor's personal data always contain third party personal data and hence it is always necessary to review the content of the results prior to disclosure, often line by line, in order to redact third party personal data.

We are of the view that the draft guidance does not appreciate that it is not carrying out the searches that organisations find burdensome, it is this necessary reviewing and redacting of the materials prior to disclosure that is the most time and resource consuming part of responding to a SAR. Organisations that are faced with a lot of requests spend a huge amount of time and resource on this part alone; some have small teams of 2 or 3 people who are fully occupied for weeks reviewing and redacting SAR materials, when this is only one aspect of their job role.

Q9 Are you answering as:

An individual acting in a private capacity (eg someone providing their views as a member of the public)

An individual acting in a professional capacity

☐

Other

Please specify the name of your organisation:

Browne Jacobson LLP

What sector are you from:

Legal

Q10 How did you find out about this survey?

ICO Twitter account

ICO Facebook account

ICO LinkedIn account

☐

ICO newsletter

ICO staff member

Colleague

Personal/work Twitter account

Personal/work Facebook account

Personal/work LinkedIn account

Other

If other please specify:

Thank you for taking the time to complete the survey.